

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

3D ENTERPRISES CONTRACTING CORPORATION,)	
)	
)	
Plaintiff,)	
)	
vs.)	CASE NO. 3:05-0594
)	JUDGE ECHOLS/KNOWLES
)	
HARPETH VALLEY UTILITIES DISTRICT,)	
)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

This matter is before the Court upon Plaintiff's "Motion for Leave to File Third-Party Complaint." Docket No. 39-1. With the Motion, Plaintiff has submitted a proposed "Third-Party Complaint." Docket No. 39-2. Plaintiff avers that, on March 15, 2006, Defendant Harpeth Valley Utilities District was permitted to amend its pleadings to include the assertion of a Counterclaim against Plaintiff. Plaintiff, in its capacity as a defendant on Defendant's Counterclaim, seeks to assert a Third-Party Complaint against Beaver Engineering, Inc. ("Beaver"). Plaintiff avers that Beaver is liable to it under the terms of a subcontract and under "common law principles."

This case is set for trial October 3, 2006. A Final Pretrial Conference is set for September 11, 2006. While Judge Echols has recently entered an Order setting the trial and Pretrial Conference on the referenced dates, the Initial Case Management Order, which was entered September 22, 2005, also set the trial and Pretrial Conference on the referenced dates.

The Initial Case Management Order also provides, “The deadline for filing Motions to Amend the Pleadings is December 22, 2005.”¹

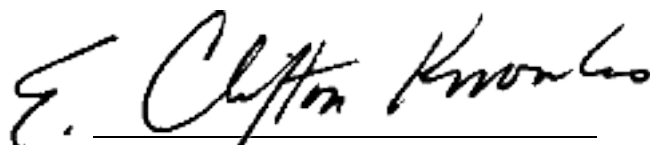
Fed. R. Civ. P. 16(b) provides in pertinent part, “A schedule [in a Scheduling Order] shall not be modified except upon a showing of good cause”

Plaintiff has not sought an extension of the deadline for filing Motions to Amend the Pleadings, nor has Plaintiff shown good cause for amending its pleadings to assert a Third-Party Complaint approximately thirty (30) days before trial. In fact, to the extent that Plaintiff’s claims against Beaver arise under the terms of a subcontract, Plaintiff must have known of its potential claim against Beaver long ago.

For the foregoing reasons, the undersigned recommends that Plaintiff’s “Motion for Leave to File Third-Party Complaint” (Docket No. 39-1) be DENIED.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has ten (10) days from receipt of this Report and Recommendation in which to file any written objections to this Recommendation with the District Court. Any party opposing said objections shall have ten (10) days from receipt of any objections filed in this Report in which to file any response to said objections. Failure to file specific objections within ten (10) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed. 2d 435 (1985), *reh’g denied*, 474 U.S. 1111 (1986).

¹ As discussed above, Defendant was allowed to amend its Answer to assert a counter-claim against Plaintiff. Defendant’s Motion to Amend, however, was filed December 20, 2005, prior to the deadline for filing Motions to Amend the Pleadings.

A handwritten signature in black ink, reading "E. Clifton Knowles". The signature is written in a cursive style with a horizontal line underneath the name.

E. Clifton Knowles
United States Magistrate Judge